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August 9, 1999

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AUG 9 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie Salas, Esquire
Secretary
Federal Communications Commission
445 12th Street, Room TW-B204
Washington, DC 20554

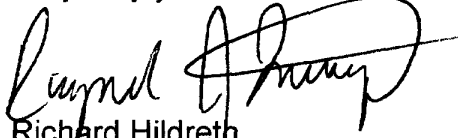
Re: Indoor Sports and Entertainment Radio Service
RM No. 9682

Dear Ms. Salas:

Transmitted herewith for filing are an original and four (4) copies of the Motion to Strike and Opposition of Inner Ear Communications, Inc. on the above referenced petition for rulemaking. The petition was given public notice on July 8, 1999, DA 99-1337. That public notice established August 9, 1999 as filing date for comments.

Please communicate with us if you need further information.

Very truly yours


Richard Hildreth
Raymond J. Quianzon
Counsel for
Inner Ear Communications, Inc.

Enclosures
RJQ/cm

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED
AUG 9 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Indoor Sport and Entertainment) RM-9682
Radio Service)

To: Chief Mass Media Bureau

Motion to Strike and Opposition

Inner Ear Communications, Inc.(Inner Ear) by counsel, hereby respectfully moves the Commission to strike the April 2, 1999, Petition for Rule Making filed by the National Hockey League (NHL) in this proceeding and, further, opposes the same filing.

At the outset, it must be recognized that the Commission currently is conducting three separate low power FM proceedings which directly address the matters contained in the NHL pleading.¹ The NHL's pleading, styled "Petition for Rulemaking," is a repetitive reintroduction of issues which are already controversial touchstones under consideration by the Commission.

¹ See RM-9208, Request to amend AM and FM service rules to designate microradio broadcasting services; RM-9242, Request to amend FM broadcast service rules to create new classes of low power stations; and RM-9246, Request amendment of the AM and FM broadcast service rules to create Event Broadcast Stations.

At best, the NHL's pleading is a late filed comment in any of the current proceedings and should be treated as such. Moreover, the broadcast service proposed by the NHL is a flawed vision of a service which already exists. The NHL proposal threatens 1) to tread upon the well developed patent rights of properly registered inventors as well as the right of operators under Part 15 of the Commission's rules; 2) to create intolerable interference in the FM band; and 3) to create severe aural distress in arenas and stadiums.

MOTION TO STRIKE

The NHL pleading is merely a repackaging of low power FM issues which are currently under consideration by the Commission. More demonstratively, counsel for the NHL penned the very petition in RM-9246 which is nearly a replica of the most recently submitted proposal. As such, the NHL pleading should not be considered as a petition for a new rulemaking. In accordance with Section 1.401(e) of the Commission's Rules, Inner Ear respectfully moves the Commission to strike the NHL pleading as repetitive. To the extent that the NHL pleading can be considered a late-filed comment in any of the three pending proceedings, it too should be struck as an additional filing made out of time and without authorization by the Commission pursuant to Section 1.415(d) of the Commission's Rules.

Three current proceedings involving low power FM transmissions are under consideration by the Commission and the NHL has participated in all of the pending proceedings². In Rulemaking Proceeding 9208, the petitioners propose a "microradio" broadcast service in the FM and AM bands which would provide very localized and/or specialized broadcast service, similar to that proposed by the NHL³. Rulemaking proceeding 9242 contains a proposal to amend the FM service rules to permit low power FM broadcasts. Specifically, the RM-9242 proposal addresses a low power FM class of station which would operate between 1 and 50 watts and would be secondary to other FM signals and also introduces a "Special-Event Station" which would operate on FM frequencies at special events nationwide⁴.

The third pending proceeding, RM-9246, was initiated by a petitioner whose filing was made by the same counsel as the NHL⁵. In the very similar petition filed in RM-9246, the petitioner proposes a system of "Event Broadcast Stations" that would transmit signals on AM and FM bands at low power during sporting

²See "Comments of the National Hockey League", RM Nos. 9208, 9242, and 9246, filed April 27, 1998.

³See Public Notice, Petitions for Rulemaking filed, Report No. 2254, Mimeo No. 81672, Feb. 5, 1998.

⁴See Petition for Rulemaking of TRA Communications Consultants Inc., Feb. 20, 1998, RM-9242, p. 12.

⁵See Petition for Rulemaking of Web SportsNet, Inc., June 24, 1996, RM-9246.

events and other spectator activities in a defined area.

The NHL commented in all three proceedings and focused its comments and support upon the event broadcasting proposal. The NHL advised the Commission that findings made under an experimental authorization could be submitted as "Further Comments" in the pending proceedings⁶. Instead, the findings under the experimental authorization now form the core of the NHL's petition in this fourth proceeding. Rather than restrict itself to the three current proceedings as originally indicated, the NHL seeks to initiate a new, repetitive proceeding. Such attempt by the NHL should be dismissed and the NHL petition should not be considered.

OPPOSITION TO PETITION

The NHL's petition fails to meet its burden under Section 1.407 of the Commission's Rules and does not disclose sufficient reason to justify the institution of a rulemaking.

Event Broadcasting Systems Currently Exist

The NHL petition fails to address significant advancements which have already been made in event broadcasting and, more importantly, fails to address how the intellectual property rights of pioneers in the event broadcasting industry would be

⁶See "Comments of the National Hockey League", p. 5.

protected. Several developers have already invented systems for harnessing narrow FM band frequencies, in accordance with the Commission's rules, in order to provide spectators with the services that the NHL has proposed. In addition, several systems which use the industrial-business frequencies and Part 15 operations provide the services which the NHL proposes.

Several inventors, including certain inventors associated with Inner Ear, have developed and patented methods and systems for transmitting audio signals to spectators at events. Through systems of broadcast antennas, strip antennas or loop antennas these pioneers in the event broadcast industry have designed methods and systems which achieve the objectives that the NHL currently seeks. Systems at the Olympic Stadium in Atlanta, the TWA Dome in St. Louis, the Staples Arena in Los Angeles, Disney World in Anaheim, and several other familiar locations have been in operation and provide event and venue attendees with audio information through methods currently permissible under Commission rules. The NHL attempt to impose a licensing scheme, presumably one to which it will be the primary if not sole beneficiary, will discourage further development and operations of alternatives. Moreover, although not within the purview of the Commission, NHL proposed operations may well infringe upon certain patented systems and methods for broadcasting audio signals to event attendees.

The NHL Proposal would Create Intolerable Interference

The service proposed by the NHL would permit transmissions of up to 10 watts on several FM channels originating directly from within twenty four of the largest metropolitan areas in the United States. The only discussion and support that the NHL can provide for its proposal is a self-promoting document prepared by the NHL Vice-President for Television and Business Affairs. The NHL proposal would create intolerable interference to current FM broadcasters and may preclude the issuance of low power FM licenses in the very areas where underserved audiences currently argue that low power FM is needed.

The findings made by the Commission in MM Docket No. 88-140 continue to be applicable and weigh against the NHL proposal⁷. The crowded FM band, particularly in major metropolitan areas, is subject to co-channel and adjacent channel interference that would be created by proposed operations at up to 10 watts originating from arenas within metropolitan areas. The NHL indicates that self-enforcement by licensees would be the policing mechanism in the proposed service. The self-policing aspect of the proposal coupled with the interference that existing broadcasters would suffer from the multiple channel transmissions threatens current signals in all areas.

⁷ Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 5 FCC Rcd. 7212 (1990).

In addition, proponents of low-power FM stations for underserved communities often cite the needs of audiences in the inner city and urban centers as those which would be addressed by a low-power FM station. Such low-power stations would be interfered with inside the protected areas where their signal would otherwise be received with little trouble. However, protections afforded to the NHL's Event Broadcasting proposal may preclude precisely what the low-power FM proponents seek. Operations of Event Broadcasting and low-power FM broadcasting stations would likely be limited to the scarce spectrum which is not currently used on FM frequencies in the largest cities. Event broadcasting operations on several frequencies at arenas, often in the central district of a city, would either create interference to, or be protected from operations on, low-power FM frequencies. This result is the exact opposite of that envisioned by low-power FM proponents.

Proposed Operations would be Distressing to Event Attendees

The NHL restricted its experiments to a controlled atmosphere where the NHL distributed radio receivers. In application, as the NHL admits, radio receivers are inexpensive and conventional. With the operation of an Event Broadcasting Service, many spectators would likely bring their own readily available radio receivers to events. Although the NHL only distributed receivers which were equipped with headphones,

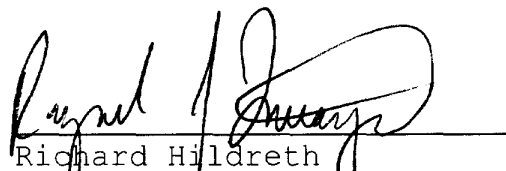
spectators would not be limited to these types of receivers. Instead, rows of spectators with hand-held or larger radio receivers, each tuned to one of the several channels that the NHL has proposed, could contribute to an intolerable volume of aural distress in the arena. The NHL has not addressed this inevitable cacophony in its proposal and such a significant matter must be considered.

CONCLUSION

Wherefore, Inner Ear hereby respectfully moves the Commission to strike the April 2, 1999, pleading filed by the NHL as repetitive and a late filed comment in three currently pending proceedings. In addition, Inner Ear opposes the NHL proposal as it threatens 1) to tread upon the well developed patent rights of properly registered inventors as well as the right of operators under Part 15 of the Commission's rules; 2) to create intolerable interference in the FM band; and 3) to create severe aural distress in arenas and stadiums.

Respectfully submitted,
INNER EAR COMMUNICATIONS, INC

By:


Richard Hildreth
Raymond J. Quianzon
Its Attorneys

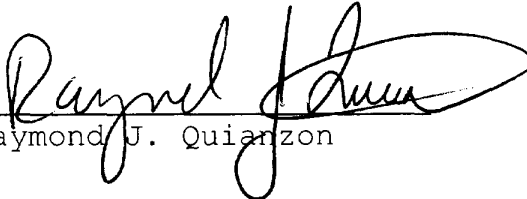
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Dated: August 9, 1999

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 9th day of August, 1999, a true and correct copy of the foregoing Motion to Strike and Opposition was sent by U.S. Mail to:

Harold K. McCombs, Jr.
Dickstein Shapiro Morin & Oshinsky, LLP
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Washington, DC 20037-1526


Raymond J. Quianzon